



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2004-0063

IN THE MATTER OF:

MONTANA RAIL LINK, INC.

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

August 20, 2004

DATE

SIGNED

Alfred C. Smith
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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| In the Matter of: |) | |
| |) | |
| Montana Rail Link, Inc. |) | EXPEDITED CONSENT AGREEMENT |
| |) | |
| Respondent. |) | DOCKET NO.: CWA-08-2004-0063 |

Complainant, United States Environmental Protection Agency, Region 8, and Respondent, Montana Rail Link, Inc., by their undersigned representatives, hereby settle the civil cause of action arising out of a spill of oil that occurred on October 31, 2003, and agree as follows:

The Clean Water Act (the Act), as amended, authorizes the Administrator of EPA to assess administrative penalties against any person who discharges oil into or upon the navigable waters and adjoining shorelines of the United States in quantities that have been determined may be harmful to the public health or welfare or environment of the United States. 33 U.S.C. § 1321(b)(6)(B)(i) and (b)(3). This determination includes discharges of oil that (1) violate applicable water quality standards, (2) cause a film, sheen, or discoloration of the surface of the water or the adjoining shorelines, or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or the adjoining shoreline. 40 C.F.R. § 110.3. This authority has been properly delegated to the undersigned EPA official.

Respondent admits that on October 31, 2003 there was a discharge of 350 gallons of diesel fuel into or upon the Clark Fork River and/or adjoining shorelines from its vehicle, in Sanders County, Montana.

Respondent's discharge caused a sheen upon or discoloration of the surface and a sludge or emulsion to be deposited beneath the surface of the water or the adjoining shoreline of the riparian area of Clark Fork River and/or adjoining shorelines.

Respondent's discharge constitutes a violation of Section 311 (b)(3) of the Act.

Respondent admits that EPA has jurisdiction in this proceeding.

Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.

This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

This Agreement contains all terms of the settlement agreed to by the parties.

Respondent consents and agrees to the assessment of a civil penalty of \$ 500.00 which, shall be paid by sending, via certified mail, a cashier's or certified check for that amount, payable to "Oil Spill Liability Trust Fund" along with a signed copy of this Agreement, to:

Donna K. Inman
Technical Enforcement Program (8ENF-UFO)
USEPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the final order, or has not cleaned up the

discharged oil as represented, this agreement is null and void, and EPA may pursue any applicable enforcement options.

Respondent states, under penalty of perjury, that it has (1) investigated the cause of the spill, (2) cleaned the spill up pursuant to federal requirements, and (3) taken corrective actions to prevent future spills.

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

Each party shall bear its own costs and attorneys fees in connection with this matter.

This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Office of Enforcement Compliance and Environmental Justice, Complainant.**

By : **Sharon L. Kercher for/** Date: **8/19/04**
Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Montana Rail Link, Inc., Respondent.

By: **SIGNED** Date: **8/11/04**
Name: **Thomas J. Walsh**
Title: **President**

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **MONTANA RAIL LINK, INC., DOCKET NO.: CWA-08-2004-0063** was filed with the Regional Hearing Clerk on August 20, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Mike Risner, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on August 20, 2004, to:

Thomas J. Walsh, President
Montana Rail Link
101 International Way
P. O. Box 16390
Missoula, MT 59808-6390

and

Commander
Finance Center (OGR)
U.S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

August 20, 2004

SIGNED _____
Tina Artemis
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON AUGUST 20, 2004.**